



Employment green card backlog tops 800,000, most of them Indian. A solution is elusive

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An estimated 800,000 immigrants who are working legally in the United States are waiting for a green card, an unprecedented backlog in employment-based immigration that has fueled a bitter policy debate but has been largely overshadowed by President Donald Trump's border wall and the administration's focus on migrant crossings from Mexico.

Most of those waiting for employment-based green cards that would allow them to stay in the United States permanently are Indian nationals. And the backlog among this group is so acute that an Indian national who applies for a green card now can expect to wait up to 50 years to get one.

The wait is largely the result of an annual quota unchanged since 1990, and per-country limits enacted decades before the tech boom made India the top source of employment-based green card-seekers.

The backlog has led to competing bills in Congress and has pitted immigrants against immigrants, setting off accusations of racism and greed and exposing a deep cynicism about the prospects for any kind of immigration reform in a polarized nation. The debate centers on the potential benefits of a quick fix to alleviate the wait times for those already in the backlog versus a broader immigration overhaul that could allow more workers to seek permanent residency, address country quotas and expand the number of available green cards.

Among those pushing for a quick resolution are business leaders, who worry that a congressional stalemate - doing nothing at all - could push Indian workers out of the United States and cause others to seek easier paths to citizenship in other countries.

"What does that ultimately mean? Valuable, skilled people decide they should leave because they're never going to get what they had hoped for," said Bruce Morrison, a lobbyist and immigration attorney who wrote the last bill that increased the number of employment green cards in 1990, when he was in Congress representing Connecticut. "And valuable people don't come because they figure our system is so broken they can't see their way through it. Therefore, other countries bidding for these skilled workers get those workers. Companies in America move jobs abroad to employ those skills elsewhere. And American prosperity suffers."

The crisis of employment-based green cards burst into the open in October after a narrow bill to address the issue nearly passed the Senate in a unanimous consent motion, after sailing easily through the House. Sen. Dick Durbin, D-Ill., stepped in and blocked it.

The bill's supporters cast it as an easy and obvious fix - and one that "arguably has wider and more bipartisan support than any other immigration bill that's been considered in this body in recent years," its Senate sponsor, Mike Lee, R-Utah, said after Durbin objected. "The reason for that is it's focused on a single, serious, solvable problem that I think we can all agree needs to be solved."

But Durbin and other critics of the Fairness for High-Skilled Immigrants Act, which aims to provide relief to Indians by eliminating the country quotas for employment green cards, said it isn't so simple. Because the bill did not increase the overall number of green cards, they argue the backlog will worsen, wait times for all nationalities will extend to 17 years, and a trickle-down effect will make it difficult for working professionals from anywhere other than India to come to the United States.

Durbin proposed his own bill, the Relief Act, which eliminates the country quotas but also raises the number of both employment and family-based green cards. Sen. Rand Paul, R-Ky., also proposed a comprehensive bill.

Lee on Tuesday circulated an amended version of the bill that would not increase the number of green cards but would add provisions Durbin has sought to protect families in the backlog. It is unclear if other Senators would be on board with the new language. Families are a significant element of the backlog involves families, as spouses and children of green card applicants count toward the annual cap of 140,000 employment green cards. Under Durbin's bill, spouses and minor children would not count against the total quota, and children of applicants would no longer age out at 21, which has made them ineligible for green cards.

Yogi Chhabra, an IT professional in Louisville, Kentucky, says the backlog crisis has put his family in danger of being torn apart.

Chhabra, 55, has lived in the United States for 21 years and has been in the backlog for nine. His oldest son, now 23, is a U.S.-educated mechanical engineer who has lived in Kentucky since he was 3, but because he aged out of eligibility two years ago, his son now faces the prospect of being deported to a country he has never known.

"If he cannot find a job in eight months, he'll have to leave," Chhabra said. "It was just yesterday that he came home crying. We don't know what to say to him."

Chhabra and his wife, who has a PhD and works on kidney transplant research, have considered the possibility that they might also have to leave.

"I have been in the same job for 20 years now," he said, noting that he has been passed by for promotions because he has to stay within a certain salary range to keep his spot in the green card line. "And they say it might be 100 years, because of the speed it is going, because of the country caps . . . I'm already 55. I'm not going to live that long."

Bill Cook, general counsel to the Immigration and Naturalization Service under President George H.W. Bush, said the system has reached the crisis stage precisely because immigration policy has long been a series of limited fixes without any comprehensive approach.

"We need to have a public conversation about how many people we need," Cook said. "Eventually the system implodes because it's like a patchwork quilt of solutions."

The Cato Institute, a libertarian think tank, declared Durbin's bill "the best legal immigration reforms overall" and found that it would "virtually double" the total number of legal immigrants receiving permanent residence during the next decade while reducing wait times for everyone to less than a year.

But Indian tech workers have responded with desperate fury, protesting Durbin's actions because they say they think his bill doesn't have a chance in a Republican-controlled Senate.

"The point is it cannot pass. Not with Trump in office," said Aman Kapoor, the leader of Immigration Voice, an activist group that backed the original legislation and has led a weeks-long campaign against Durbin, calling him a "racist" and accusing him of "ethnic cleansing" for stopping the Fairness for High-Skilled Immigrants Act. "You can't add one green card now under Trump."

Indians need a solution now, Kapoor said. "Every day you see someone in the backlog is dying. Or kids are aging out," Kapoor said. "People are very stressed out because of the backlog."

A green card is the final step in the legal immigration process - before becoming a U.S. citizen - and the government doles out about 1 million per year, 140,000 of which are employment-based. The most common green card involves a family member as sponsor.

An allotment system devised in the 1960s to promote diversity stipulates that no country can take more than 7% of certain types of green cards, such as those linked to employment, in any year. Extraordinarily high demand from certain countries has led to the backlogs.

In the employment category, approximately 75% of the backlog is Indian, the result of a growing tide of Indian migration since the 1990s, fueled by the tech boom. The rest are Chinese. Because the applicants for family-based green cards are predominantly Mexican and Filipino, the wait time for the Mexican and Filipino adult siblings of U.S. citizens, for example, is more than 20 years.

But unlike those in line for family visas, the workers in the employment backlog already are in the United States on temporary visas. According to immigration attorneys, workers and policy experts, the wait can be devastating.

When workers in the backlog die, their families lose their spot in line and are subject to deportation; the same is true for children who turn 21.

In October, the widow of an aviation systems engineer whose family lost its spot on the waitlist when he was killed in a 2017 hate crime published a commentary in the Kansas City Star, comparing Durbin to the man who killed her husband. The attacker shouted "get out of my country," as he shot and killed Srinivas Kuchibhotla, an Indian tech worker.

Durbin was achieving the same outcome by blocking the Fairness for High-Skilled Immigrants Act, she argued.

Legal analysts concluded that under the bill, nearly all of the green card recipients for the first several years would be Indians, given their number in the backlog. Rather than alleviating the problem, the bill would pass it on to people from other nations, they said.

"Do the math," Ira J. Kurzban, a prominent immigration law scholar, wrote in an analysis he circulated to colleagues. He noted that in one of the employment-based categories - EB-2 - there

are 40,040 green cards allocated a year, and "there are 550,000 nationals waiting for residency, of which 512,000 are Indian."

A first-come, first-served distribution would mean that for years it would be only Indians - and some Chinese - getting employment-based green cards, analysts say. It would take 12 years just to hand out the green cards needed for the Indians in that one subsection of the backlog, and that doesn't take into account the hundreds of thousands more who would be expected to join the list during that time.

An analysis by the Congressional Research Service in 2018, conducted before the bill was introduced, found that Indians would make up almost the entire backlog for a minimum of four to five years. An analysis by the Cato Institute calculated it would take eight years. Many prominent immigration attorneys have backed Kurzban's analysis.

Kurzban calculated that the backlog would grow from more than 800,000 people today to 1.1 million in 2029.

Because most of the backlogged Indians work in the tech industry, the shift would mean that high-skilled workers in other areas "like health care and medical research . . . will be shut out of residency for well over a decade," Kurzban wrote. "Potential new Americans in basic science, engineering, chemistry, physics, artificial intelligence, climate change and many other fields who are not Indian nationals will be discouraged from ever coming to the U.S."

Adding to the complexity, most of the backlogged Indians are on specialist H1-B visas, which are perpetually renewable for those waiting in the backlog - making it possible to wait - while other nationalities typically come on other types of visas that cannot be renewed if an immigrant intends to stay. A long wait thus becomes impossible.

"The wait will be so long that non-Indian workers won't be able to get in line," said Michelle Canero, another immigration attorney who ran her own analysis of the numbers. Canero also said that direct foreign investment, almost none of which comes from India, will suffer because foreign companies will not be able to move their top professionals into the United States to run their satellite offices.

"Every year, foreign direct investment adds about \$300 billion to our economy," Canero said. "About 85% is European and Canadian . . . If we now say that these foreign nationals who establish their operations here can no longer immigrate to oversee their investment, I think we're going to see a deterrence."

The projections have drawn an array of non-Indian immigrant groups, such as United We Dream, a coalition of recipients of the Deferred Action for Childhood Arrivals program, and the National Iranian American Council, to back Durbin's proposal. The American Immigration Lawyers Association (AILA) has joined them, and Rep. Donna Shalala, D-Fla., introduced a companion bill in the House.

Despite the backlog, a provision that unused green cards roll over to those in line means that Indians actually have collected about 20 percent of the employment-based green cards during the past decade - well above the quota, and at least double the amount any other nationality received.

Indians who are collecting their green cards today have been waiting at least 10 years. Chinese have been waiting four. Other nationalities wait less than two years.

Immigration Voice and Compete America, a coalition of mostly tech companies that includes Amazon, Microsoft, Facebook and Google, say the extended wait times expected under the Fairness for High-Skilled Immigrants Act are irrelevant. (Amazon founder Jeff Bezos owns The Washington Post.)

"The employment-based green card system was developed to help employers find workers," said Scott Corley, Compete America's executive director. "At no point was it discussed that, 'Hey, listen guys, this really needs to be about diversity.' " Diversity, he said, can be found in family-based immigration.

The top priority should be removing the country quotas that are "fundamentally bigoted" - because they automatically "discriminate" against people with Indian citizenship, rather than judging them for their skill set - he said. "Nobody who actually works in Washington believes we're going to solve the green card issue any time soon."

Anand Vemuri, 46, an IT professional in New Jersey, is losing hope. His sons, now 16 and 13, came to the United States as toddlers. The family has been in the backlog for seven years, and he said he thinks he won't get through by the time his older son ages out of eligibility.

Vemuri's success in the United States has no impact on his chances of obtaining a green card. He owns a townhouse, serves as the vice president of technology at Barclays and has watched his children excel in school.

"But I'm getting a feeling that I'm hitting a roadblock," he said. "I don't see any hope here."